

Matthew L. Larrabee, Esq. (SBN 97147)
matthew.larrabee@dechert.com
Joshua D. N. Hess, Esq. (SBN 244115)
joshua.hess@dechert.com
DECHERT LLP
One Bush Street, Suite 1600
San Francisco, CA 94104
Telephone: (415) 262-4500
Facsimile: (415) 262-4555

Attorneys for Defendants

[Additional counsel on signature page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NORTHSTAR FINANCIAL ADVISORS,
INC., on Behalf of Itself and All Others
Similarly Situated,

Plaintiff,

v.

SCHWAB INVESTMENTS; MARIANN
BYERWALTER, DONALD F.
DORWARD, WILLIAM A. HASLER,
ROBERT G. HOLMES, GERALD B.
SMITH, DONALD R. STEPHENS,
MICHAEL W. WILSEY, CHARLES R.
SCHWAB, RANDALL W. MERK,
JOSEPH H. WENDER and JOHN F.
COGAN, as TRUSTEES OF SCHWAB
INVESTMENTS; and CHARLES
SCHWAB INVESTMENT
MANAGEMENT, INC.,

Defendants.

Case No. 08-cv-04119-LHK

CLASS ACTION

**ANSWER TO FOURTH AMENDED
CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

Defendants Charles Schwab Investment Management, Inc., Mariann Byerwalter, Donald Dorward, William Hasler, Robert Holmes, Gerald Smith, Donald Stephens, Michael Wilsey, Charles Schwab, Randall Merk, Joseph Wender, and John Cogan (“Defendants”)¹ submit their answer to the Fourth Amended Class Action Complaint (“FAC”), filed June 25, 2015, as follows²:

ANSWER

1. Defendants admit that the ticker for the Schwab Total Bond Market Fund is “SWLBX.” The remainder of this Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied.

2. Defendants admit that Plaintiff purports to bring suit against the identified parties in this Paragraph. The allegations in Paragraph 2 are characterizations of the FAC and otherwise contain conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the remaining allegations in this Paragraph are denied.

3. Defendants admit the allegations of this Paragraph.

4. Defendants admit that the ticker for the Lehman Brothers U.S. Aggregate Bond Index is LBUSTRUU. Defendants admit that the Fund’s fundamental investment objectives could only be changed by shareholder vote. Except as otherwise admitted, Defendants deny the allegation in this Paragraph.

5. Defendants deny the allegations in this Paragraph.

6. Defendants admit that the Fund was prohibited from investing 25% or more of the value of its total assets in any industry, as defined pursuant federal law and SEC regulations.

¹ Although Schwab Investments is also named as a defendant in the FAC, this Court dismissed all pending claims against it with prejudice. *See* October 5, 2015 Order [D.E. 229] at 15-18, 23, 41.

² In addition to the allegations included in the numbered paragraphs of the FAC, Defendants deny all other allegations in the FAC on the grounds that they do not have sufficient knowledge to form an opinion as to the truth of the allegations.

1 Defendants otherwise deny the allegations in this Paragraph.

2 7. Defendants deny the allegations in this Paragraph.

3 8. Defendants assert that Judge Illston's February 19, 2009, opinion is a matter of
4 public record and speaks for itself; the Court is referred to that document for a complete and
5 accurate statement of its contents. To the extent that any further response is required, the
6 allegations in this Paragraph are denied.

7 9. Defendants admit that the Fund seeks to track the performance of the Lehman
8 Index. Except as otherwise admitted, Defendants deny the allegations in this Paragraph.

9 10. Defendants admit that the Fund's performance since February 27, 2009, has
10 substantially tracked the performance of the Index. The remainder of this Paragraph contains
11 conclusions of law and not factual statements for which any response is required. To the extent
12 that any further response is required, the remaining allegations in this Paragraph are denied.

13 11. Defendants deny the allegation that the Fund deviated from its investment
14 guidelines. The remainder of this Paragraph contains conclusions of law and not factual
15 statements for which any response is required. To the extent that any further response is required,
16 the remaining allegations in this Paragraph are denied.

17 12. Defendants admit that Plaintiff amended the Second Amended Complaint. The
18 remainder of this Paragraph contains conclusions of law and not factual statements for which any
19 response is required. To the extent that any further response is required, the allegations in this
20 Paragraph are denied.

21 13. This Paragraph (including its subparts (a) through (n)) does not contain factual
22 statements for which any response is required. To the extent that any further response is required,
23 the remaining allegations in this Paragraph are denied.

24 14. Defendants deny the allegations in this Paragraph. *See* October 5, 2015 Order
25 [D.E. 229].

26 15. Defendants deny the allegations in this Paragraph. *See* October 5, 2015 Order
27 [D.E. 229].

28 16. This Paragraph contains conclusions of law and not factual statements for which

1 any response is required. To the extent that any further response is required, the allegations in
2 this Paragraph are denied.

3 17. This Paragraph contains conclusions of law and not statements of fact for which
4 any response is required. To the extent that any further response is required, the allegations in
5 this Paragraph are denied. To the extent this Paragraph purports to quote from the Schwab
6 Investments' Agreement and Declaration of Trust, the Court is referred to that document for a full
7 and complete statement of its contents.

8 18. This Paragraph contains conclusions of law and not factual statements for which
9 any response is required. To the extent that any further response is required, the allegations in
10 this Paragraph are denied.

11 19. This Paragraph contains conclusions of law and not factual statements for which
12 any response is required. To the extent that any further response is required, the allegations in
13 this Paragraph are denied.

14 20. This Paragraph contains conclusions of law and not factual statements for which
15 any response is required. To the extent that any further response is required, the allegations in
16 this Paragraph are denied.

17 21. This Paragraph contains conclusions of law and not factual statements for which
18 any response is required. To the extent that any further response is required, the allegations in
19 this Paragraph are denied.

20 22. This Paragraph contains conclusions of law and not factual statements for which
21 any response is required. To the extent that any further response is required, the allegations in
22 this Paragraph are denied.

23 23. Defendants lack sufficient knowledge to form an opinion as to the truth of the
24 allegations in this Paragraph. To the extent that any further response is required, the allegations
25 in this Paragraph are denied.

26 24. Defendants lack sufficient knowledge to form an opinion as to the truth of the
27 allegations in this Paragraph. To the extent that any further response is required, the allegations
28 in this Paragraph are denied.

1 25. Defendants lack sufficient knowledge to form an opinion as to the truth of the
2 allegations in this Paragraph. To the extent that any further response is required, the allegations
3 in this Paragraph are denied.

4 26. Defendants admit that Northstar has purchased and sold securities as an
5 independent investment advisor through Charles Schwab's institutional platform. Defendants
6 lack sufficient knowledge to form an opinion as to the truth of the remaining allegations in this
7 Paragraph. To the extent that any further response is required, the remaining allegations in this
8 Paragraph are denied.

9 27. Defendants lack sufficient knowledge to form an opinion as to the truth of the
10 allegations in this Paragraph. To the extent that any further response is required, the allegations
11 in this Paragraph are denied.

12 28. Defendants lack sufficient knowledge to form an opinion as to the truth of the
13 allegations in this Paragraph. To the extent that any further response is required, the allegations
14 in this Paragraph are denied.

15 29. Defendants admit that this Paragraph correctly states the amount of shares that
16 Henry Holz purchased in the Fund. Defendants lack sufficient knowledge to form an opinion as
17 to the truth of the remaining allegations in this Paragraph. To the extent that any further response
18 is required, the remaining allegations in this Paragraph are denied.

19 30. Defendants admit that Schwab Investments is a registered investment company
20 under the Investment Company Act of 1940, is organized under Massachusetts law, consists of a
21 series of 94 funds, and is the sponsor of the Fund. Except as otherwise admitted, Defendants
22 deny the allegations in this Paragraph.

23 31. Defendants admit that the Charles Schwab Corporation is a publicly owned
24 corporation. The remainder of this Paragraph contains conclusions of law and not factual
25 statements for which any response is required. To the extent that any further response is required,
26 the allegations in this Paragraph are denied.

27 32. Defendants admit that the Fund is a series of Schwab Investments and the Fund is
28 managed by Charles Schwab Investment Management, Inc. ("CSIM"). Except as otherwise

1 admitted, Defendants deny the allegations in this Paragraph.

2 33. Defendants admit that the Trust is an unincorporated business organization created
3 by an instrument of trust. The Court is referred to that document for a complete and accurate
4 statement of its contents. The remaining allegations in this Paragraph contain conclusions of law
5 and not factual statements for which a response is required. To the extent that any further
6 response is required, the remaining allegations in this Paragraph are denied.

7 34. Defendants admit the allegations of this Paragraph.

8 35. This Paragraph contains conclusions of law and not factual statements for which
9 any response is required. To the extent that any further response is required, the allegations in
10 this Paragraph are denied.

11 36. Defendants admit the allegations of this Paragraph.

12 37. Defendants admit that Schwab Investments, at times, uses the term “Schwab” in its
13 marketing materials. Except as otherwise admitted, the allegations in this Paragraph are denied.

14 38. Defendants admit the allegations of this Paragraph.

15 39. Defendants assert that the Proxy Statement dated May 13, 2010, speaks for itself,
16 and the Court is referred to that document for a complete and accurate statement of its contents.
17 To the extent that any further response is required, the allegations in this Paragraph are denied.

18 40. Defendants assert that the Proxy Statement dated May 13, 2010, speaks for itself,
19 and the Court is referred to that document for a complete and accurate statement of its contents.
20 Defendants admit that Charles Schwab is the Chairman and a trustee of the Charles Schwab
21 Family of Funds and Schwab Investments. To the extent that any further response is required, the
22 remaining allegations in this Paragraph are denied.

23 41. This Paragraph contains conclusions of law and not factual statements for which
24 any response is required. To the extent that any further response is required, the allegations in
25 this Paragraph are denied.

26 42. Defendants admit that the Trust is managed by a Board of Trustees that manages
27 and holds Trust property for the benefit of the shareholders. To the extent this Paragraph quotes
28 from a November 15, 2005, Statement of Additional Information, as amended December 9, 2005,

1 that document speaks for itself, and the Court is referred to that document for a complete and
2 accurate statement of its contents. The remainder of this Paragraph contains legal conclusions
3 and not factual statements for which any response is required. To the extent that any further
4 response is required, the remaining allegations in this Paragraph are denied.

5 43. Defendants admit that the Trustees serve with respect to multiple Schwab Funds.
6 To the extent this Paragraph relies upon the Fund's Prospectus dated November 15, 2007, that
7 document speaks for itself and the Court is referred to that document for a complete and accurate
8 statement of its contents. To the extent that any further response is required, the remaining
9 allegations in this Paragraph are denied.

10 44. Defendants admit the years of service, number of portfolios overseen, and annual
11 compensation listed in this Paragraph for each Trustee as of August 31, 2007. Except as
12 otherwise admitted, the remaining allegations in this Paragraph are denied.

13 45. Defendants admit that Joseph H. Wender and John F. Cogan replaced Robert G.
14 Holmes and Donald F. Dorward as Trustees in 2008. To the extent this Paragraph relies upon the
15 Fund's Amended Prospectus dated June 13, 2008, that document speaks for itself and the Court is
16 referred to that document for a complete and accurate statement of its contents. The remainder of
17 this Paragraph contains defined terms for the FAC and not factual statements for which any
18 response is required. To the extent that any further response is required, the remaining allegations
19 in this Paragraph are denied.

20 46. Defendants deny the allegations of this Paragraph.

21 47. Defendants admit that the Trustees were first added as defendants in Plaintiff's
22 Second Amended Complaint dated September 28, 2010. The remainder of this Paragraph
23 contains conclusions of law and not factual statements for which any response is required. To the
24 extent that any further response is required, the allegations in this Paragraph are denied.

25 48. Defendants admit that neither the Fund's shareholders nor the shareholders in any
26 other series of Schwab Investments are required to vote on appointment of the Trustees. Except
27 as otherwise admitted, the allegations in this Paragraph are denied.

28 49. Defendants admit that Charles Schwab and Randall Merk are not independent

1 trustees pursuant to federal law and regulations and, therefore, they are not compensated by the
2 Fund. Except as otherwise admitted, the allegations in this Paragraph are denied.

3 50. Defendants admit that Schwab Investments has entered into an Investment
4 Advisory Agreement (“IAA”) with CSIM to provide certain management and advisory services to
5 it. The Court is referred to the IAA for a complete and accurate statement of its contents. Except
6 as otherwise admitted, the allegations in this Paragraph are denied.

7 51. Defendants admit that CSIM provides investment advisory and management
8 services to the Fund pursuant to the IAA, which the Court is referred to for a complete and
9 accurate statement of its contents. Defendants admit that CSIM is paid a fee by the Fund for
10 these services. Defendants admit that CSIM is a wholly owned subsidiary of The Charles
11 Schwab Corporation. Except as otherwise admitted, the allegations in this Paragraph are denied.

12 52. Defendants admit that CSIM provides investment advisory and management
13 services to all funds that comprise Schwab Investments. Except as otherwise admitted, the
14 allegations in this Paragraph are denied.

15 53. Defendants deny the allegations in this Paragraph. To the extent this Paragraph
16 quotes from certain documents, the Court is referred to those documents for a complete and
17 accurate statement of their contents.

18 54. Defendants assert that Schwab Investments’ Definitive Proxy Statement dated
19 March 24, 2000, speaks for itself, and the Court is referred to that document for a complete and
20 accurate statement of its contents. The remainder of this Paragraph contains legal conclusions
21 and not factual statements for which any response is required. To the extent that any further
22 response is required, the allegations in this Paragraph are denied.

23 55. Defendants assert that the letter referred to in this Paragraph speaks for itself, and
24 the Court is referred to that document for a complete and accurate statement of its contents. The
25 remainder of this Paragraph contains conclusions of law and not factual statements for which any
26 response is required. To the extent that any further response is required, the allegations in this
27 Paragraph are denied.

28 56. Defendants assert that the August 31, 2007, Annual Report speaks for itself and

1 the Court is referred to that document for a complete and accurate statement of its contents. The
2 remainder of this Paragraph contains conclusions of law and not factual statements for which any
3 response is required. To the extent that any further response is required, the allegations in this
4 Paragraph are denied.

5 57. This Paragraph contains conclusions of law and not factual statements for which
6 any response is required. To the extent that any further response is required, the allegations in
7 this Paragraph are denied.

8 58. Defendants assert that the Funds' prospectuses speak for themselves and the Court
9 is referred to those documents for a complete and accurate statement of their contents. To the
10 extent that any further response is required, the remaining allegations in this Paragraph are
11 denied.

12 59. Defendants deny the allegations in this Paragraph. To the extent this Paragraph
13 relies upon or quotes from certain documents, those documents speak for themselves and the
14 Court if referred to them for a complete and accurate statement of their contents.

15 60. This Paragraph contains conclusions of law and not factual statements for which
16 any response is required. To the extent that any further response is required, the allegations in
17 this Paragraph are denied.

18 61. This Paragraph contains conclusions of law and not factual statements for which
19 any response is required. To the extent that any further response is required, the allegations in
20 this Paragraph are denied.

21 62. Defendants deny the allegations in this Paragraph. To the extent this Paragraph
22 quotes from the "Charles Schwab" website and an article by Mark Riepe, those documents speak
23 for themselves and the Court is referred to those documents for a complete and accurate statement
24 of their contents. To the extent that any further response is required, the remaining allegations in
25 this Paragraph are denied.

26 63. Defendants admit that the Trustees review the performance and fees of CSIM on
27 an annual basis and have never selected an entity other than CSIM to serve as an investment
28 manager. Except as otherwise admitted, the remaining allegations in this Paragraph are denied.

1 64. Defendants admit that the SEC filed an action against CSIM on January 11, 2011,
2 regarding an unrelated short-term bond fund that was also managed by it, the YieldPlus Fund.
3 Defendants further admit this action was settled without an admission of liability for more than
4 \$118 million. To the extent this Paragraph relies upon the Litigation Release No. 21806, filed in
5 that action, that document speaks for itself and the Court is referred to that document for a
6 complete and accurate statement of its contents. To the extent that any further response is
7 required to this Paragraph, the remaining allegations are denied.

8 65. Defendants admit that the SEC filed an action against Randall Merk and Kimon
9 Daifotis on January 11, 2011. Defendants lack any knowledge of any charges filed against any
10 individual named "Damon Daifotis" and deny that such an individual held the positions listed in
11 this Paragraph. To the extent this Paragraph relies upon the complaint filed by the SEC against
12 Messrs. Merk and Daifotis, the document speaks for itself and the Court is referred to that
13 document for a complete and accurate statement of its contents. Defendants deny that the
14 complaint contains accurate statements of fact. Except as otherwise admitted, the remaining
15 allegations in this Paragraph are denied.

16 66. Defendants admit that the Trustees did not terminate the IAA or seek additional
17 compensation from CSIM. Except as otherwise admitted, the allegations in this Paragraph are
18 denied.

19 67. To the extent this Paragraph relies upon this Court's March 2, 2011, Order and the
20 Reply Memorandum, those documents speak for themselves and the Court is referred to those
21 documents for a complete and accurate statement of their contents. To the extent that any further
22 response is required, the allegations in this Paragraph are denied.

23 68. This Paragraph contains conclusions of law and not factual statements for which
24 any response is required. To the extent that any further response is required, the allegations in
25 this Paragraph are denied.

26 69. Defendants deny the allegations of this Paragraph.

27 70. Defendants deny the allegations in this Paragraph. *See* October 5, 2015 Order
28 [D.E. 229].

1 71. This Paragraph contains descriptions of the FAC and not statements of fact for
2 which a response is required. To the extent that any further response is required, the allegations
3 in this Paragraph are denied.

4 72. Defendants deny the allegations in this Paragraph. *See* October 5, 2015 Order
5 [D.E. 229].

6 73. Defendants admit that the Fund had over \$1.5 billion in assets and approximately
7 150 million shares outstanding as of August 31, 2007. The remainder of this Paragraph contains
8 conclusions of law and not factual statements for which any response is required. To the extent
9 that any further response is required, the allegations in this Paragraph are denied.

10 74. This Paragraph contains conclusions of law and not factual statements for which
11 any response is required. To the extent that any further response is required, the allegations in
12 this Paragraph are denied.

13 75. This Paragraph contains conclusions of law and not factual statements for which
14 any response is required. To the extent that any further response is required, the allegations in
15 this Paragraph are denied.

16 76. This Paragraph (including its sub-paragraphs) contain conclusions of law and not
17 factual statements for which any response is required. To the extent that any further response is
18 required, the allegations in this Paragraph are denied.

19 77. This Paragraph contains conclusions of law and not factual statements for which
20 any response is required. To the extent that any further response is required, the allegations in
21 this Paragraph are denied.

22 78. Defendants admit the allegations in this Paragraph.

23 79. Defendants admit that, prior to 1997, the investment objective of the Schwab
24 Long-Term Government Bond Fund was to provide a high level of current income consistent with
25 preservation of capital by investing primarily in securities issued by the United States
26 Government, its agencies or instrumentalities and repurchase agreements covering those
27 securities. To the extent this Paragraph purports to quote from an unidentified document,
28 Defendants refer the Court to that document for a complete and accurate statement of its contents.

1 80. Defendants admit that a fundamental investment objective cannot be changed
2 without a shareholder vote. Except as otherwise admitted, the allegations in this Paragraph are
3 denied. To the extent this Paragraph quotes from unidentified documents, the Court is referred to
4 those documents for a complete and accurate statement of their contents.

5 81. Defendants deny the allegations in this Paragraph.

6 82. Defendants admit that the Government Bond Fund had \$24.8 million in investment
7 assets as of August 31, 1997. Except as otherwise admitted, the allegations in this Paragraph are
8 denied.

9 83. Defendants admit the allegations in this Paragraph.

10 84. Defendants admit that shareholder approval was sought in 1997 to change the
11 investment objective of the Fund to attempt to provide a high level of current income consistent
12 with preservation of capital by seeking to track the investment results of a particular bond index.
13 Defendants admit that the bond index the Fund sought to track was the Lehman Brothers [U.S.]
14 Aggregate Bond Index. To the extent this Paragraph attempts to characterize the 1997 Proxy
15 Statement, that document speaks for itself and the Court is referred to that document for a
16 complete and accurate statement of its contents. Except as otherwise admitted, the allegations in
17 this Paragraph are denied.

18 85. Defendants admit that the Fund's investment objective can only be changed with
19 shareholder approval. To the extent this Paragraph relies upon the 1997 Proxy Statement, that
20 document speaks for itself and the Court is referred to that document for a complete and accurate
21 statement of its contents.

22 86. Defendants admit that the Lehman Brothers [U.S.] Aggregate Bond Index is a
23 broad, market-weighted index that includes a variety of investment-grade securities, including
24 mortgage-backed securities. To the extent this Paragraph purports to quote from the 1997 Proxy
25 Statement, that document speaks for itself and the Court is referred to that documents for a
26 complete and accurate statement of its contents.

27 87. Defendants admit the allegations in this Paragraph.

28 88. To the extent this Paragraph purports to quote from the 1997 Proxy Statement, that

1 document speaks for itself and the Court is referred to that document for a complete and accurate
2 statement of its contents. The allegations in this Paragraph are otherwise denied.

3 89. To the extent this Paragraph purports to quote from the 1997 Proxy Statement, that
4 document speaks for itself and the Court is referred to that document for a complete and accurate
5 statement of its contents. The allegations in this Paragraph are otherwise denied.

6 90. Defendants admit that the 1997 Proxy Statement's Proposal No. 3 included the
7 language "eliminate, reclassify or amend each Fund's fundamental investment restrictions." To
8 the extent this Paragraph purports to quote from the 1997 Proxy Statement, that document speaks
9 for itself and the Court is referred to that document for a complete and accurate statement of its
10 contents. The allegations in this Paragraph are otherwise denied.

11 91. To the extent this Paragraph purports to quote from the 1997 Proxy Statement, that
12 document speaks for itself and the Court is referred to that document for a complete and accurate
13 statement of its contents. The allegations in this Paragraph are otherwise denied.

14 92. Defendants admit that the 1997 Proxy Statement's Proposal #3 proposed a change
15 in the definition of "concentration" that would permit the Fund to invest more than 25% of its
16 total assets in an industry in order to track the Lehman Index. To the extent this Paragraph
17 purports to quote from the 1997 Proxy Statement, that document speaks for itself and the Court is
18 referred to that document for a complete and accurate statement of its contents. Except as
19 otherwise admitted, the allegations in this Paragraph are denied.

20 93. Defendants admit that the reason for the change in the concentration policy
21 proposed in 1997 was to provide the Fund with greater flexibility in managing its assets. To the
22 extent this Paragraph purports to quote from the 1997 Proxy Statement, that document speaks for
23 itself and the Court is referred to that document for a complete and accurate statement of its
24 contents. Except as otherwise admitted, the allegations in this Paragraph are denied.

25 94. The allegations in this Paragraph contain legal conclusions and not factual
26 statement to which a response is required. To the extent that any further response is required, the
27 allegations in this Paragraph are denied.

28 95. Defendants admit that the proposals in the 1997 Proxy Statement were approved

1 by the Fund's shareholders. To the extent this Paragraph purports to quote from a Prospectus
2 Supplement, that document speaks for itself and the Court is referred to that document for a
3 complete and accurate statement of its contents. Except as otherwise admitted, the allegations in
4 this Paragraph are denied.

5 96. To the extent this Paragraph purports to quote from a Prospectus Supplement, that
6 document speaks for itself and the Court is referred to that document for a complete and accurate
7 statement of its contents. Except as otherwise admitted, the allegations in this Paragraph are
8 denied.

9 97. The allegations in this Paragraph contain conclusions of law and not factual
10 statements to which a response is required. To the extent a further response is required, the
11 allegations in this Paragraph are denied. To the extent this Paragraph relies upon the 1997 Proxy
12 Statement, that document speaks for itself and the Court is referred to that document for a
13 complete and accurate statement of its contents.

14 98. The allegations in this Paragraph state conclusions of law and not factual
15 statements to which a response is required. To the extent that any further response is required, the
16 allegations in this Paragraph are denied.

17 99. The allegations in this Paragraph contain conclusions of law and not factual
18 statements to which a response is required. To the extent that any further response is required, the
19 remaining allegations in this Paragraph are denied. To the extent this Paragraph purports to quote
20 certain unidentified documents, those documents speak for themselves and the Court is referred to
21 those documents for a complete and accurate statement of their contents.

22 100. This Paragraph contains conclusions of law and not factual statements for which
23 any response is required. To the extent that any further response is required, the allegations in
24 this Paragraph are denied.

25 101. Defendants admit that the Fund disclosed its investments in government agency
26 and non-agency mortgage-backed securities. Defendants admit that the government agencies that
27 issue mortgage-backed securities are the Governmental National Mortgage Association (referred
28 to as Ginnie Mae), the Federal National Mortgage Association (referred to as Fannie Mae), and

1 the Federal Home Loan Mortgage Association (referred to as Freddie Mac). Defendants admit
2 that these agencies are sometimes described as Government Sponsored Enterprises or GSEs.
3 Except as otherwise admitted, Defendants lack sufficient information to form an opinion as to the
4 truth of the remaining allegations in this Paragraph, and therefore deny the remainder of the
5 allegations.

6 102. Defendants lack sufficient knowledge to form an opinion as to the truth of the
7 allegations in this Paragraph, and therefore deny the allegations.

8 103. Defendants admit that the Fund disclosed its investments in government agency
9 mortgage-backed securities. Except as otherwise admitted, Defendants lack sufficient knowledge
10 to form an opinion as to the truth of the remaining allegations in this Paragraph, and therefore
11 denies the remainder of the allegations. To the extent this Paragraph relies upon the 1997 Proxy
12 Statement, that document speaks for itself and the Court is referred to that document for a
13 complete and accurate statement of its contents.

14 104. Defendants lack sufficient knowledge to form an opinion as to the truth of the
15 allegations in this Paragraph, and therefore deny the allegations.

16 105. Defendants lack sufficient knowledge to form an opinion as to the truth of the
17 allegations in this Paragraph, and therefore deny the allegations.

18 106. Defendants lack sufficient knowledge to form an opinion as to the truth of the
19 allegations in this Paragraph, and therefore deny the allegations.

20 107. Defendants lack sufficient knowledge to form an opinion as to the truth of the
21 allegations in this Paragraph, and therefore deny the allegations.

22 108. Defendants admit that the Fund performed in a manner that was consistent with the
23 Lehman Index from August 31, 1997, through August 31, 2007. Defendants further assert that
24 the rates of return for both the Fund and the Index are a matter of public record and speak for
25 themselves. Except as otherwise admitted, the allegations in this Paragraph are denied.

26 109. Defendants admit that the Fund's assets grew from approximately \$24 million as
27 of August 31, 1997, to approximately \$1.5 billion as of August 31, 2007. Except as otherwise
28 admitted, the allegations in this Paragraph are denied.

1 110. Defendants admit that 37% of the Fund's total assets were invested in CMOs on
2 August 31, 2007. Defendants deny the remaining allegations in this Paragraph.

3 111. Defendants admit that the Fund underperformed the Lehman Index at various
4 times. The relative performances of the Fund and the Index between August 31, 2007, and
5 February 27, 2009, are a matter of public record and speak for themselves. Except as otherwise
6 admitted, the allegations in this Paragraph are denied.

7 112. Defendants admit that the Fund invested in non-agency collateralized mortgage
8 obligations ("CMOs") and disclosed those investments. Defendants admit that non-agency
9 CMOs are not necessarily subject to the same underwriting requirements as securities issued by
10 Ginnie Mae, Fannie Mae, and/or Freddie Mac. Except as otherwise admitted, the allegations in
11 this Paragraph are denied.

12 113. Defendants admit that CMOs in which the Fund invested were sponsored by
13 numerous parties, including Citigroup, Merrill Lynch, Countrywide, Bear Stearns, IndyBank,
14 Lehman Brothers, and Washington Mutual. Except as otherwise admitted, the allegations in this
15 Paragraph are denied.

16 114. This Paragraph contains conclusions of law and not factual statements for which
17 any response is required. To the extent that any further response is required, the allegations in
18 this Paragraph are denied.

19 115. Defendants deny the allegations in this Paragraph.

20 116. Defendants admit that 37% of the Fund's total assets were invested in CMOs on
21 August 31, 2007. Defendants otherwise lack sufficient knowledge to form an opinion as to the
22 truth of the remaining allegations in this Paragraph because it does not identify the other
23 purported "analyses" to which it refers, and therefore denies those allegations.

24 117. Defendants lack sufficient knowledge to form an opinion as to the truth of the
25 percentage included in this Paragraph, and therefore deny the allegations. The remaining
26 allegations in this Paragraph are denied.

27 118. Defendants lack sufficient knowledge to form an opinion as to the truth of the
28 allegations in this Paragraph, and therefore deny the allegations.

119. Defendants lack sufficient knowledge to form an opinion as to the truth of the allegations in this Paragraph, and therefore deny the allegations. To the extent this Paragraph relies upon a joint Statement on Subprime Mortgage Lending, that document speaks for itself and the Court is referred to that document for a complete and accurate statement of its contents.

120. Defendants deny the allegations in this Paragraph.

121. Defendants lack sufficient knowledge to form an opinion as to the truth of the allegations in this Paragraph, and therefore deny the allegations. To the extent this Paragraph purports to rely on a Bloomberg terminal chart, that chart speaks for itself and the Court is referred to it for a complete and accurate depiction of its contents.

122. Defendants deny the allegations in this Paragraph.

123. Defendants admit that the Fund's performance has substantially tracked the Lehman Index since at least February 27, 2009. Except as otherwise admitted, the allegations in this Paragraph are denied.

FIRST CLAIM FOR RELIEF

124. Defendants repeat and incorporate by reference their responses to the foregoing paragraphs herein. Further, this Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been asserted against the Trust.

125. This Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied. Further, this Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been asserted against the Trust.

126. This Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied. Further, this Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been asserted against the Trust.

127. Defendants admit that the Schwab Trustees were trustees of Schwab Investments, which is a Massachusetts Business Trust. Defendants deny that Plaintiff was a beneficiary of that Trust. The remainder of this Paragraph contains conclusions of law and not factual statements for

1 which any response is required. To the extent that any further response is required, the
2 allegations in this Paragraph are denied. To the extent this Paragraph purports to quote from a
3 March 24, 2000 Proxy Statement, that document speaks for itself and the Court is referred to that
4 document for a complete and accurate statement of its contents. Further, this Court's Order dated
5 October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been asserted
6 against the Trust.

7 128. Defendants admit that Charles Schwab has served as a trustee of Schwab
8 Investments and is a shareholder of Schwab Corp. The remainder of this Paragraph contains
9 conclusions of law and not factual statements for which any response is required. To the extent
10 that any further response is required, the allegations in this Paragraph are denied. Further, this
11 Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it
12 has been asserted against the Trust.

13 129. This Paragraph contains conclusions of law and not factual statements for which
14 any response is required. To the extent that any further response is required, Defendants lack
15 sufficient knowledge to form an opinion as to the truth of the allegations in this Paragraph, and
16 therefore deny the allegations. Further, this Court's Order dated October 5, 2015, dismissed this
17 claim for relief with prejudice to the extent it has been asserted against the Trust.

18 130. This Paragraph contains conclusions of law and not factual statements for which
19 any response is required. To the extent that any further response is required, the allegations in
20 this Paragraph are denied. Further, this Court's Order dated October 5, 2015, dismissed this
21 claim for relief with prejudice to the extent it has been asserted against the Trust.

22 131. Defendants deny the allegations in this Paragraph. Further, this Court's Order
23 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been
24 asserted against the Trust.

25 132. Defendants deny the allegations in this Paragraph. Further, this Court's Order
26 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been
27 asserted against the Trust.

28 133. Defendants deny the allegations in this Paragraph. Further, this Court's Order

1 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been
2 asserted against the Trust.

3 134. Defendants deny the allegations in this Paragraph. Further, this Court's Order
4 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been
5 asserted against the Trust.

6 **SECOND CLAIM FOR RELIEF**

7 135. Defendants repeat and incorporate by reference their responses to the foregoing
8 paragraphs herein.

9 136. This Paragraph contains conclusions of law and not factual statements for which
10 any response is required. To the extent that any further response is required, the allegations in
11 this Paragraph are denied.

12 137. Defendants admit that the Advisor serves as the investment adviser and
13 administrator of Schwab Investments. Defendants assert that the Investment Advisory and
14 Administrative Agreement speaks for itself. The remaining allegations in this Paragraph do not
15 contain factual statements for which any response is required. To the extent that any further
16 response is required, the remaining allegations in this Paragraph are denied.

17 138. To the extent this Paragraph purports to quote from the IAA, it speaks for itself
18 and the Court is referred to that document for a complete and accurate statement of its contents.
19 The remaining allegations in this Paragraph do not contain factual statements for which any
20 response is required. To the extent that any further response is required, the remaining allegations
21 in this Paragraph are denied.

22 139. To the extent this Paragraph purports to quote from the IAA, it speaks for itself
23 and the Court is referred to that document for a complete and accurate statement of its contents.
24 The remaining allegations in this Paragraph are conclusions of law and not factual statements for
25 which any response is required. To the extent that any further response is required, the remaining
26 allegations in this Paragraph are denied.

27 140. This Paragraph contains conclusions of law and not factual statements for which
28 any response is required. To the extent that any further response is required, Defendants lack

1 sufficient knowledge to form an opinion as to the truth of the allegations in this Paragraph, and
2 therefore deny the allegations.

3 141. This Paragraph contains conclusions of law and not factual statements for which
4 any response is required. To the extent that any further response is required, the allegations in
5 this Paragraph are denied.

6 142. Defendants deny the allegations in this Paragraph.

7 143. Defendants deny the allegations in this Paragraph.

8 144. Defendants deny the allegations in this Paragraph.

9 145. Defendants deny the allegations in this Paragraph.

10 **THIRD CLAIM FOR RELIEF**

11 146. Defendants repeat and incorporate by reference their responses to the foregoing
12 paragraphs herein.

13 147. This Paragraph contains conclusions of law and not factual statements for which
14 any response is required. To the extent that any further response is required, the allegations in
15 this Paragraph are denied.

16 148. Defendants deny the allegations in this Paragraph.

17 149. Defendants deny the allegations in this Paragraph.

18 150. Defendants deny the allegations in this Paragraph.

19 151. Defendants deny the allegations in this Paragraph.

20 **FOURTH CLAIM FOR RELIEF**

21 152. Defendants repeat and incorporate by reference their responses to the foregoing
22 paragraphs herein.

23 153. This Paragraph contains conclusions of law and not factual statements for which
24 any response is required. To the extent that any further response is required, the allegations in
25 this Paragraph are denied.

26 154. Defendants deny the allegations in this Paragraph.

27 155. Defendants deny the allegations in this Paragraph.

28 156. Defendants deny the allegations in this Paragraph.

157. Defendants deny the allegations in this Paragraph.

FIFTH CLAIM FOR RELIEF

158. Defendants repeat and incorporate by reference their responses to the foregoing paragraphs herein. Moreover, this Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

159. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

160. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

161. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

162. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

163. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

164. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

165. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

166. This Court's Order dated October 5, 2015, dismissed this claim for relief with

1 prejudice. Accordingly, no response is required. To the extent a response is required, the
2 allegations in this Paragraph are denied.

3 167. This Court's Order dated October 5, 2015, dismissed this claim for relief with
4 prejudice. Accordingly, no response is required. To the extent a response is required, the
5 allegations in this Paragraph are denied.

6 168. This Court's Order dated October 5, 2015, dismissed this claim for relief with
7 prejudice. Accordingly, no response is required. To the extent a response is required, the
8 allegations in this Paragraph are denied.

9 169. This Court's Order dated October 5, 2015, dismissed this claim for relief with
10 prejudice. Accordingly, no response is required. To the extent a response is required, the
11 allegations in this Paragraph are denied.

12 170. This Court's Order dated October 5, 2015, dismissed this claim for relief with
13 prejudice. Accordingly, no response is required. To the extent a response is required, the
14 allegations in this Paragraph are denied.

15 171. This Court's Order dated October 5, 2015, dismissed this claim for relief with
16 prejudice. Accordingly, no response is required. To the extent a response is required, the
17 allegations in this Paragraph are denied.

18 172. This Court's Order dated October 5, 2015, dismissed this claim for relief with
19 prejudice. Accordingly, no response is required. To the extent a response is required, the
20 allegations in this Paragraph are denied.

21 173. This Court's Order dated October 5, 2015, dismissed this claim for relief with
22 prejudice. Accordingly, no response is required. To the extent a response is required, the
23 allegations in this Paragraph are denied.

24 174. This Court's Order dated October 5, 2015, dismissed this claim for relief with
25 prejudice. Accordingly, no response is required. To the extent a response is required, the
26 allegations in this Paragraph are denied.

27 175. This Court's Order dated October 5, 2015, dismissed this claim for relief with
28 prejudice. Accordingly, no response is required. To the extent a response is required, the

1 allegations in this Paragraph are denied.

2 176. This Court's Order dated October 5, 2015, dismissed this claim for relief with
3 prejudice. Accordingly, no response is required. To the extent a response is required, the
4 allegations in this Paragraph are denied.

5 **SIXTH CLAIM FOR RELIEF**

6 177. Defendants repeat and incorporate by reference their responses to the foregoing
7 paragraphs herein. Moreover, this Court's Order dated October 5, 2015, dismissed this claim for
8 relief with prejudice. Accordingly, no response is required. To the extent a response is required,
9 the allegations in this Paragraph are denied.

10 178. This Court's Order dated October 5, 2015, dismissed this claim for relief with
11 prejudice. Accordingly, no response is required. To the extent a response is required, the
12 allegations in this Paragraph are denied.

13 179. This Court's Order dated October 5, 2015, dismissed this claim for relief with
14 prejudice. Accordingly, no response is required. To the extent a response is required, the
15 allegations in this Paragraph are denied.

16 180. This Court's Order dated October 5, 2015, dismissed this claim for relief with
17 prejudice. Accordingly, no response is required. To the extent a response is required, the
18 allegations in this Paragraph are denied.

19 181. This Court's Order dated October 5, 2015, dismissed this claim for relief with
20 prejudice. Accordingly, no response is required. To the extent a response is required, the
21 allegations in this Paragraph are denied.

22 182. This Court's Order dated October 5, 2015, dismissed this claim for relief with
23 prejudice. Accordingly, no response is required. To the extent a response is required, the
24 allegations in this Paragraph are denied.

25 183. This Court's Order dated October 5, 2015, dismissed this claim for relief with
26 prejudice. Accordingly, no response is required. To the extent a response is required, the
27 allegations in this Paragraph are denied.

28 184. This Court's Order dated October 5, 2015, dismissed this claim for relief with

1 prejudice. Accordingly, no response is required. To the extent a response is required, the
2 allegations in this Paragraph are denied.

3 185. This Court's Order dated October 5, 2015, dismissed this claim for relief with
4 prejudice. Accordingly, no response is required. To the extent a response is required, the
5 allegations in this Paragraph are denied.

6 186. This Court's Order dated October 5, 2015, dismissed this claim for relief with
7 prejudice. Accordingly, no response is required. To the extent a response is required, the
8 allegations in this Paragraph are denied.

9 187. This Court's Order dated October 5, 2015, dismissed this claim for relief with
10 prejudice. Accordingly, no response is required. To the extent a response is required, the
11 allegations in this Paragraph are denied.

12 188. This Court's Order dated October 5, 2015, dismissed this claim for relief with
13 prejudice. Accordingly, no response is required. To the extent a response is required, the
14 allegations in this Paragraph are denied.

15 189. This Court's Order dated October 5, 2015, dismissed this claim for relief with
16 prejudice. Accordingly, no response is required. To the extent a response is required, the
17 allegations in this Paragraph are denied.

18 **SEVENTH CLAIM FOR RELIEF**

19 190. Defendants repeat and incorporate by reference their responses to the foregoing
20 paragraphs herein. Moreover, this Court's Order dated October 5, 2015, dismissed this claim for
21 relief with prejudice. Accordingly, no response is required. To the extent a response is required,
22 the allegations in this Paragraph are denied.

23 191. This Court's Order dated October 5, 2015, dismissed this claim for relief with
24 prejudice. Accordingly, no response is required. To the extent a response is required, the
25 allegations in this Paragraph are denied.

26 192. This Court's Order dated October 5, 2015, dismissed this claim for relief with
27 prejudice. Accordingly, no response is required. To the extent a response is required, the
28 allegations in this Paragraph are denied.

194. Defendants repeat and incorporate by reference their responses to the foregoing paragraphs herein. Further, this Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been asserted against the Trust.

196. This Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied. Further, this Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been asserted against the Trust.

198. Defendants admit that Charles Schwab has served as a trustee of Schwab Investments and is a shareholder of Schwab Corp. The remainder of this Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied. Further, this

1 Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it
2 has been asserted against the Trust.

3 199. This Paragraph contains conclusions of law and not factual statements for which
4 any response is required. To the extent that any further response is required, Defendants lack
5 sufficient knowledge to form an opinion as to the truth of the allegations in this Paragraph, and
6 therefore deny the allegations. Further, this Court's Order dated October 5, 2015, dismissed this
7 claim for relief with prejudice to the extent it has been asserted against the Trust.

8 200. This Paragraph contains conclusions of law and not factual statements for which
9 any response is required. To the extent that any further response is required, the allegations in
10 this Paragraph are denied. Further, this Court's Order dated October 5, 2015, dismissed this
11 claim for relief with prejudice to the extent it has been asserted against the Trust.

12 201. Defendants deny the allegations in this Paragraph. Further, this Court's Order
13 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been
14 asserted against the Trust.

15 202. Defendants deny the allegations in this Paragraph. Further, this Court's Order
16 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been
17 asserted against the Trust.

18 203. Defendants deny the allegations in this Paragraph. Further, this Court's Order
19 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been
20 asserted against the Trust.

21 204. Defendants deny the allegations in this Paragraph. Further, this Court's Order
22 dated October 5, 2015, dismissed this claim for relief with prejudice to the extent it has been
23 asserted against the Trust.

24 **NINTH CLAIM FOR RELIEF**

25 205. Defendants repeat and incorporate by reference their responses to the foregoing
26 paragraphs herein.

27 206. This Paragraph contains conclusions of law and not factual statements for which
28 any response is required. To the extent that any further response is required, the allegations in

1 this Paragraph are denied.

2 207. Defendants admit that the Advisor serves as the investment adviser and
3 administrator of Schwab Investments. Defendants assert that the Investment Advisory and
4 Administrative Agreement speaks for itself. The remaining allegations in this Paragraph do not
5 contain factual statements for which any response is required. To the extent that any further
6 response is required, the remaining allegations in this Paragraph are denied.

7 208. To the extent this Paragraph purports to quote from the IAA, it speaks for itself
8 and the Court is referred to that document for a complete and accurate statement of its contents.
9 The remaining allegations in this Paragraph do not contain factual statements for which any
10 response is required. To the extent that any further response is required, the remaining allegations
11 in this Paragraph are denied.

12 209. To the extent this Paragraph purports to quote from the IAA, it speaks for itself
13 and the Court is referred to that document for a complete and accurate statement of its contents.
14 The remaining allegations in this Paragraph are conclusions of law and not factual statements for
15 which any response is required. To the extent that any further response is required, the remaining
16 allegations in this Paragraph are denied.

17 210. This Paragraph contains conclusions of law and not factual statements for which
18 any response is required. To the extent that any further response is required, Defendants lack
19 sufficient knowledge to form an opinion as to the truth of the allegations in this Paragraph, and
20 therefore deny the allegations.

21 211. This Paragraph contains conclusions of law and not factual statements for which
22 any response is required. To the extent that any further response is required, the allegations in
23 this Paragraph are denied.

24 212. Defendants deny the allegations in this Paragraph.

25 213. Defendants deny the allegations in this Paragraph.

26 214. Defendants deny the allegations in this Paragraph.

27 215. Defendants deny the allegations in this Paragraph.

28

TENTH CLAIM FOR RELIEF

216. Defendants repeat and incorporate by reference their responses to the foregoing paragraphs herein.

217. This Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied.

218. Defendants deny the allegations in this Paragraph.

219. Defendants deny the allegations in this Paragraph.

220. Defendants deny the allegations in this Paragraph.

221. Defendants deny the allegations in this Paragraph.

ELEVENTH CLAIM FOR RELIEF

222. Defendants repeat and incorporate by reference their responses to the foregoing paragraphs herein.

223. This Paragraph contains conclusions of law and not factual statements for which any response is required. To the extent that any further response is required, the allegations in this Paragraph are denied.

224. Defendants deny the allegations in this Paragraph.

225. Defendants deny the allegations in this Paragraph.

226. Defendants deny the allegations in this Paragraph.

227. Defendants deny the allegations in this Paragraph.

TWELFTH CLAIM FOR RELIEF

228. Defendants repeat and incorporate by reference their responses to the foregoing paragraphs herein. Moreover, this Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

229. This Court's Order dated October 5, 2015, dismissed this claim for relief with prejudice. Accordingly, no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

1 230. This Court's Order dated October 5, 2015, dismissed this claim for relief with
2 prejudice. Accordingly, no response is required. To the extent a response is required, the
3 allegations in this Paragraph are denied.

4 231. This Court's Order dated October 5, 2015, dismissed this claim for relief with
5 prejudice. Accordingly, no response is required. To the extent a response is required, the
6 allegations in this Paragraph are denied.

7 232. This Court's Order dated October 5, 2015, dismissed this claim for relief with
8 prejudice. Accordingly, no response is required. To the extent a response is required, the
9 allegations in this Paragraph are denied.

10 233. This Court's Order dated October 5, 2015, dismissed this claim for relief with
11 prejudice. Accordingly, no response is required. To the extent a response is required, the
12 allegations in this Paragraph are denied.

13 234. This Court's Order dated October 5, 2015, dismissed this claim for relief with
14 prejudice. Accordingly, no response is required. To the extent a response is required, the
15 allegations in this Paragraph are denied.

16 235. This Court's Order dated October 5, 2015, dismissed this claim for relief with
17 prejudice. Accordingly, no response is required. To the extent a response is required, the
18 allegations in this Paragraph are denied.

19 236. This Court's Order dated October 5, 2015, dismissed this claim for relief with
20 prejudice. Accordingly, no response is required. To the extent a response is required, the
21 allegations in this Paragraph are denied.

22 237. This Court's Order dated October 5, 2015, dismissed this claim for relief with
23 prejudice. Accordingly, no response is required. To the extent a response is required, the
24 allegations in this Paragraph are denied.

25 238. This Court's Order dated October 5, 2015, dismissed this claim for relief with
26 prejudice. Accordingly, no response is required. To the extent a response is required, the
27 allegations in this Paragraph are denied.

28 239. This Court's Order dated October 5, 2015, dismissed this claim for relief with

1 prejudice. Accordingly, no response is required. To the extent a response is required, the
2 allegations in this Paragraph are denied.

3 240. This Court's Order dated October 5, 2015, dismissed this claim for relief with
4 prejudice. Accordingly, no response is required. To the extent a response is required, the
5 allegations in this Paragraph are denied.

6 241. This Court's Order dated October 5, 2015, dismissed this claim for relief with
7 prejudice. Accordingly, no response is required. To the extent a response is required, the
8 allegations in this Paragraph are denied.

9 242. This Court's Order dated October 5, 2015, dismissed this claim for relief with
10 prejudice. Accordingly, no response is required. To the extent a response is required, the
11 allegations in this Paragraph are denied.

12 243. This Court's Order dated October 5, 2015, dismissed this claim for relief with
13 prejudice. Accordingly, no response is required. To the extent a response is required, the
14 allegations in this Paragraph are denied.

15 244. This Court's Order dated October 5, 2015, dismissed this claim for relief with
16 prejudice. Accordingly, no response is required. To the extent a response is required, the
17 allegations in this Paragraph are denied.

18 245. This Court's Order dated October 5, 2015, dismissed this claim for relief with
19 prejudice. Accordingly, no response is required. To the extent a response is required, the
20 allegations in this Paragraph are denied.

21 246. This Court's Order dated October 5, 2015, dismissed this claim for relief with
22 prejudice. Accordingly, no response is required. To the extent a response is required, the
23 allegations in this Paragraph are denied.

24 **THIRTEENTH CLAIM FOR RELIEF**

25 247. Defendants repeat and incorporate by reference their responses to the foregoing
26 paragraphs herein. Moreover, this Court's Order dated October 5, 2015, dismissed this claim for
27 relief with prejudice. Accordingly, no response is required. To the extent a response is required,
28 the allegations in this Paragraph are denied.

1 248. This Court's Order dated October 5, 2015, dismissed this claim for relief with
2 prejudice. Accordingly, no response is required. To the extent a response is required, the
3 allegations in this Paragraph are denied.

4 249. This Court's Order dated October 5, 2015, dismissed this claim for relief with
5 prejudice. Accordingly, no response is required. To the extent a response is required, the
6 allegations in this Paragraph are denied.

7 250. This Court's Order dated October 5, 2015, dismissed this claim for relief with
8 prejudice. Accordingly, no response is required. To the extent a response is required, the
9 allegations in this Paragraph are denied.

10 251. This Court's Order dated October 5, 2015, dismissed this claim for relief with
11 prejudice. Accordingly, no response is required. To the extent a response is required, the
12 allegations in this Paragraph are denied.

13 252. This Court's Order dated October 5, 2015, dismissed this claim for relief with
14 prejudice. Accordingly, no response is required. To the extent a response is required, the
15 allegations in this Paragraph are denied.

16 253. This Court's Order dated October 5, 2015, dismissed this claim for relief with
17 prejudice. Accordingly, no response is required. To the extent a response is required, the
18 allegations in this Paragraph are denied.

19 254. This Court's Order dated October 5, 2015, dismissed this claim for relief with
20 prejudice. Accordingly, no response is required. To the extent a response is required, the
21 allegations in this Paragraph are denied.

22 255. This Court's Order dated October 5, 2015, dismissed this claim for relief with
23 prejudice. Accordingly, no response is required. To the extent a response is required, the
24 allegations in this Paragraph are denied.

25 256. This Court's Order dated October 5, 2015, dismissed this claim for relief with
26 prejudice. Accordingly, no response is required. To the extent a response is required, the
27 allegations in this Paragraph are denied.

28 257. This Court's Order dated October 5, 2015, dismissed this claim for relief with

1 prejudice. Accordingly, no response is required. To the extent a response is required, the
2 allegations in this Paragraph are denied.

3 258. This Court's Order dated October 5, 2015, dismissed this claim for relief with
4 prejudice. Accordingly, no response is required. To the extent a response is required, the
5 allegations in this Paragraph are denied.

6 259. This Court's Order dated October 5, 2015, dismissed this claim for relief with
7 prejudice. Accordingly, no response is required. To the extent a response is required, the
8 allegations in this Paragraph are denied.

9 **FOURTEENTH CLAIM FOR RELIEF**

10 260. Defendants repeat and incorporate by reference their responses to the foregoing
11 paragraphs herein. Moreover, this Court's Order dated October 5, 2015, dismissed this claim for
12 relief with prejudice. Accordingly, no response is required. To the extent a response is required,
13 the allegations in this Paragraph are denied.

14 261. This Court's Order dated October 5, 2015, dismissed this claim for relief with
15 prejudice. Accordingly, no response is required. To the extent a response is required, the
16 allegations in this Paragraph are denied.

17 262. This Court's Order dated October 5, 2015, dismissed this claim for relief with
18 prejudice. Accordingly, no response is required. To the extent a response is required, the
19 allegations in this Paragraph are denied.

20 263. This Court's Order dated October 5, 2015, dismissed this claim for relief with
21 prejudice. Accordingly, no response is required. To the extent a response is required, the
22 allegations in this Paragraph are denied.

23 **AFFIRMATIVE DEFENSES**

24
25 Defendants assert the following affirmative defenses to the First, Second, Third, Fourth,
26 Eighth, Ninth, Tenth, and Eleventh Causes of Action (the "Remaining Claims") in the Complaint.
27 Every other cause of action in the Fourth Amended Complaint was dismissed with prejudice in
28 this Court's October 5, 2015, Order. Defendants reserve the right to modify, clarify, amend, or

1 supplement these affirmative defenses, as may be appropriate at a later time.

2 **First Affirmative Defense**

3 The Remaining Claims are precluded by the Securities Litigation Uniform Standards Act
4 (SLUSA).

5 **Second Affirmative Defense**

6 The Remaining Claims fail to state a claim upon which relief may be granted.

7 **Third Affirmative Defense**

8 The Remaining Claims are barred by the applicable Statute of Limitations under
9 Massachusetts law or any other applicable law.

10 **Fourth Affirmative Defense**

11 The Remaining Claims are barred because Plaintiff and the putative class members have
12 not suffered any injury. In the alternative, any claimed damages are speculative and thus are not
13 recoverable.

14 **Fifth Affirmative Defense**

15 The Remaining Claims are barred because Plaintiff, and the putative class members, have
16 already received compensation for the harms alleged herein and such prior compensation must
17 off-set any potential recovery here.

18 **Sixth Affirmative Defense**

19 The Remaining Claims are not properly maintained as a class action.

20 **Seventh Affirmative Defense**

21 The Remaining Claims are barred, in whole or in part, by laches, equitable estoppel,
22 waiver, or other related equitable doctrines.

23 **Eighth Affirmative Defense**

24 Plaintiff lacked standing to file this lawsuit, rendering all amended complaints (including
25 the Fourth Amended Complaint) null and void.

26 **Ninth Affirmative Defense**

27 Plaintiff lacks standing because the Remaining Claims are derivative claims that belong to
28 the Trust, if anyone, and Plaintiff has failed to satisfy the statutory pre-requisites for asserting a

1 derivative claim.

2 **Tenth Affirmative Defense**

3 The Remaining Claims are barred because at all relevant times the Defendants relied upon
4 information, opinions, reports or records presented by or prepared by other persons as to matters
5 which the Trustees reasonably believe to be within such person's professional or expert
6 competence.

7 **Eleventh Affirmative Defense**

8 Claims One and Eight are barred because the Trustees are protected by an exculpatory
9 clause in the Declaration of Trust.

10 **Twelfth Affirmative Defense**

11 Claims Three, Four, Nine, and Ten are barred because aiding and abetting claims cannot
12 be maintained in the absence of any underlying claims for relief.

13 **Thirteenth Affirmative Defense**

14 Plaintiff and the putative class have failed to mitigate their damages.

15 **Fourteenth Affirmative Defense**

16 The Court lacks subject matter jurisdiction over the Remaining Claims.

17
18 **PRAYER**

19 WHEREFORE the Defendants pray as follows:

- 20 1. Judgment be entered in favor of the Defendants;
- 21 2. Plaintiffs' prayer for class certification, appointment of class counsel,
- 22 compensatory damages, disgorgement, injunctive relief, attorneys' costs and expenses,
- 23 recessionary damages, exemplary damages, punitive damages, and other equitable relief be
- 24 denied.

1 Dated: October 13, 2015

Respectfully Submitted,

2 DECHERT LLP

3 By: /s/ Joshua D.N. Hess

4 Matthew L. Larrabee

Joshua D. N. Hess

5 One Bush Street, Suite 1600

San Francisco, CA 94104

6 Attorneys for Schwab Investments; Mariann
7 Byerwalter, Donald F. Dorward, William A.
8 Hasler, Robert G. Holmes, Gerald B. Smith,
9 Donald R. Stephens, Michael W. Wilsey,
10 Charles R. Schwab, Randall W. Merk, Joseph
11 H. Wender, John F. Cogan, and Charles
12 Schwab Investment Management, Inc.

13 QUINN EMANUEL URQUHART &
14 SULLIVAN, LLP

15 By: /s/ Karin Kramer

16 Richard A. Schirtzer

Karin Kramer

17 50 California Street, 22nd Floor

18 San Francisco, CA 94111

19 Attorneys for Mariann Byerwalter, Donald F.
20 Dorward, William A. Hasler, Robert G.
21 Holmes, Gerald B. Smith, Donald R. Stephens,
22 Michael W. Wilsey, Charles R. Schwab,
23 Randall W. Merk, Joseph H. Wender and John
24 F. Cogan